

IN THE  
MISSOURI SUPREME COURT

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NO. SC 85138

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STATE OF MISSOURI, ex rel. JOHN HESS, M.D.

Relator,

v.

MARGARET M. NEILL, Circuit Court Judge, 22<sup>nd</sup> Judicial Circuit, Missouri,

Respondent.

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APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS CITY  
CAUSE NO. 012-00056

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**REPLY BRIEF OF RELATOR JOHN HESS, M.D.**

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## **INTRODUCTION**

The reply brief of Relator Hess is submitted because Respondent Neill's analysis provided to this Court within her brief is faulty in several aspects. First, the Respondent in her brief focuses on the filing of the motion attacking the venue of the case and not the results of the investigation of the St. Louis City Circuit Clerk. The parties agreed to extend the time for a response to the *First Amended Petition* and then Relator Hess timely filed the motion challenging venue according to the investigation by Mr. Favazza, the St. Louis City Circuit Clerk. Moreover, Respondent's assertions notwithstanding, there is no reason to differentiate between an extension of time by consent of the parties to allow a defense counsel time to review a case and thus raise an issue of personal jurisdiction and an extension of time by consent of the parties to allow a defense counsel time to review a case and file a motion challenging venue.

Respondent's brief misses the mark in regard to the proper venue for the suit because she relies upon joinder without realizing that there is one jurisdiction where venue is proper as to both defendants. There is an available venue for both of the Defendants subject to the non-profit venue statute and that venue is St. Louis County. Respondent argues that under the law applying the joinder principles, Plaintiffs may bring suit against all Defendants in St. Louis City while ignoring that §355.176.4, R.S.Mo. prohibits suits against non-profit Missouri Baptist Medical Center (hereinafter Missouri Baptist) in St. Louis City. Joinder is irrelevant because Missouri Baptist cannot be sued in St. Louis City. However, under the venue statutes, Plaintiffs may sue both non-profit Defendants in St. Louis County.



Finally, Respondent's brief refers to the order of October 29, 2002, as the subject of the point of error, but in actuality it is the order of July 31, 2002, that is the subject of the point of error. It is the contention of Relator Hess that Plaintiffs are alleging that he is a concurrent tortfeasor whose alleged wrong occurred at the same time as the alleged wrong of BJC Health System (hereinafter BJC) and Missouri Baptist. As such, venue as to each Defendant must be established. In the current posture of this case, with the Plaintiffs suing Missouri Baptist in St. Louis County and BJC in St. Louis City, the contacts of Relator Hess are such as to properly send his portion of the case to St. Louis County with the portion of the case belonging to Missouri Baptist insofar as Plaintiffs allege Relator Hess committed a wrong at Missouri Baptist in St. Louis County and Plaintiffs have not alleged any connection between Relator Hess and BJC.

## **POINTS RELIED ON**

- I. Relator is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because Dr. Hess did not waive any objections to venue but filed a timely motion to transfer venue because this Court previously held that it did not see any logical reason for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the Court pursuant to Rule 44.01 V.A.M.R. in that counsel for Dr. Hess obtained the approval of counsel for Plaintiffs for an additional thirty days to file any responsive pleading or motions including a motion contesting venue and filed the motion memorializing the agreement prior to the expiration of the original thirty days for the filing of a responsive pleading, motion, or challenge.**

*Ferguson v. Long*, 107 S.W.2d 7 (Mo., Div.1 1937)

*Goodson v. State*, 978 S.W.2d 363 (Mo.App. E.D. 1998)

*Miller v. Variety Corp.*, 922 S.W.2d 821 (Mo.App. E.D. 1996)

*State ex rel White v. Marsh*, 646 S.W.2d 357 (Mo. 1983)

**II. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because venue is improper in the St. Louis City under §355.176.4, R.S.Mo. 1994 in that the cause of action, if any, accrued in St. Louis County, Missouri Baptist has its registered agent and principle place of business in St. Louis County, and BJC has its registered agent in St. Louis County.**

*State ex rel Linthicum et al. v. Calvin*, 57 S.W.3d 855 (Mo. banc 2001)

*State ex rel. City of Springfield Through Bd. of Public Utilities v. Barker*,  
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§355.176.4, R.S.Mo. 1994.

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**III. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because if venue must be separately considered, then the venue of Dr. Hess in relation to Missouri Baptist and BJC should have been considered and the case transferred to St. Louis County in that Dr. Hess allegedly performed the negligent acts in St. Louis County at Missouri Baptist and St. Louis County is the proper venue pursuant to §355.176.4, R.S.Mo. for Missouri Baptist.**

*State ex rel. Tarrasch v. Crow*, 622 S.W.2d 928 (Mo. 1981)

*Turnbough v. Gaertner*, 589 S.W.2d 290 (Mo. banc 1979)

§355.176.4, R.S.Mo.

## ARGUMENT

- I. Relator is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because Dr. Hess did not waive any objections to venue but filed a timely motion to transfer venue because this Court previously held that it did not see any logical reason for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the Court pursuant to Rule 44.01 V.A.M.R. in that counsel for Dr. Hess obtained the approval of counsel for Plaintiffs for an additional thirty days to file any responsive pleading or motions including a motion contesting venue and filed the motion memorializing the agreement prior to the expiration of the original thirty days for the filing of a responsive pleading, motion, or challenge.**

Respondent's contention that Relator Hess waived his challenge to venue when he allegedly failed to timely file his motion regarding venue is wrong. Respondent fails to mention in her brief that counsel for Plaintiffs, out of professional courtesy, agreed to a thirty day extension to file any response to the *First Amended Petition* including one for venue. Plaintiffs admitted that the extension was with their consent. (Exhibit 23, p. 2-3.)

1. Instead Respondent focuses on the November 26, 2001, filing date and the markings

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1 All exhibit references are to the exhibits attached to the *Petition for Writ of Prohibition* or, in the Alternative, *Petition for Writ of Mandamus* filed by Relator Hess in this case.

on the venue motion. She argues that the markings show that the motion challenging venue was untimely and ignores the investigation of the Circuit Clerk of St. Louis City.

In this case, Plaintiffs' counsel agreed to the extension of time to allow Relator Hess' counsel to review the case. The entry of appearance (Exhibit 12) notes that counsel is making an entry and preserving all defenses including personal jurisdiction and venue. **In fact, venue is specifically mentioned as one of the preserved defenses.** Plaintiffs' counsel never objected to this entry and the certificate of service shows service to Plaintiffs' counsel. Even during argument or briefing of the issues, Plaintiffs, through their attorney, have not argued that Relator Hess waived his rights to contest venue by the filing of the entry pursuant to the agreement of counsel. The Plaintiffs only argued that the motion was not timely filed due to the anthrax terrorism restrictions and subsequent debacle.

There is no Missouri case law directly on point regarding whether a stipulation of counsel for an extension of time to file a responsive pleading including defenses to venue, memorialized by an agreement filed in the Court within the time allowed for the filing of the answer or responsive pleading or the original venue challenge but not specifically approved by the judge, extends the time for filing an answer, responsive pleading, or challenge to proper venue. However, the **White** case provides guidance with this issue and stands in contrast to the assertions of Respondent in her brief. In the **White** case this Court stated that it found "no logical basis for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the court under Rule 44.01(b)." *State ex rel. White v. Marsh*, 646 S.W.2d 357, 361 (Mo. banc 1983). In

that case the Mayo Clinic asked for an extension of time, with the consent of opposing counsel, to file a response to the *Petition* and filed that motion prior to the expiration for filing a response to the *First Amended Petition*. The Court did not enter an order approving this motion until a number of days after the time expired to file an answer or responsive pleading to the *Petition*. Within the time extension the Mayo Clinic filed a motion to dismiss based on lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process. This Court held that there was no waiver to jurisdiction over the person by the entry of the counsel and filing of the motions after the initial time expired.

Relator Hess fully understands that the issue in that case was related to the jurisdiction of the circuit court and not related to venue. However, the reasoning is still compelling and the words of this Court no less significant. There is no logical reason for distinguishing between an extension of time to file an answer, responsive pleading, or even a motion for change of venue when there is an agreement of the opposing counsel and the agreement is memorialized and filed with the Court and an agreement for additional time approved by the court. To the extent that Respondent relies upon *Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F2d 871 (3<sup>rd</sup> Cir. 1944), it is a federal case and is not controlling. What should control is this Court's reasoning regarding extensions as noted in *White*.

It should be perfectly clear that the assertions of Respondent that the motion of Relator Hess challenging venue was "file stamped" after November 26, 2001, on November 29, 2001, is patently false. (Brief of Respondent, p. 12) The Circuit Clerk

stated in his letter that the date stamp of November 29, 2001, was an internal stamp of the Circuit Clerk's Office when it was distributed to the trial courtroom clerk in order for that clerk to make an entry. (Exhibit 21, exhibit A.) The Circuit Clerk specifically stated in his letter that his office "erred when it receipted [the] Motion by not time stamping the date and time of its receipt." (Exhibit 21, exhibit A.) Mr. Favazza further said he concluded that his office had the motion by November 26, 2001, because the envelope had a metered postage date of November 20, 2001, as did the Plaintiffs' copy, and the Plaintiffs used the same post office as the Circuit Clerk and the Plaintiffs received the motion by November 26, 2001. (Exhibit 21, exhibit A.) Moreover, Relator Hess mailed the motion in the highly unprecedented times following the attacks of September 11, 2001, and the anthrax mailings. The Circuit Clerk noted this as a reason that his office erred.

Respondent cites to *Ferguson* for the proposition that the mere lodging of a paper with the clerk without the knowledge of the clerk authorized to receive it would not constitute a filing. (Brief of Respondent, p.13-14; citing *Ferguson v. Long*, 107 S.W.2d 7, 11 (Mo. Div 1, 1937). But Respondent fails to mention that numerous cases cited in *Ferguson* have held that a document was properly filed and that the Circuit Clerk made an error when the document is in the file, there was no question whether it was actually filed, and then the officer made an error. *Id.*, at 10-11. *citations omitted*. The facts of the instant case are directly on point with *Ferguson* in that the original venue motion is in the file, no one questions whether the document was filed, and the Circuit Clerk admits his office erred in not stamp filing the motion.



Likewise, the ***Goodson*** case, cited by the Respondent in her brief, also supports the position of Relator Hess. In that case, the prisoner alleged that the motion was mailed eighty-three days after the mandate issued and that it was probable the Circuit Clerk had the motion. The Court of Appeals for the Eastern District rejected the contention of the prisoner that he timely filed his motion for post-conviction relief citing three reasons: 1) The prisoner failed to contend in the trial court that he timely filed the motion for post-conviction relief; 2) The prisoner failed to submit any evidence to support his contention that the motion was mailed in a timely manner; and, 3) The prisoner failed to show the date stamped on the motion was after the clerk received the motion. ***Goodson v. State***, 978 S.W.2d 363, 365 (Mo.App. E.D. 1998).

Reviewing the three criteria found in ***Goodson***, Relator Hess did contend before the Circuit Court that the document was timely filed. (Exhibit 21, p. 5). Relator Hess argued that the motion was timely filed in his *Memorandum of Law in Support of Motion of Defendant John Hess, M.D., to Transfer Venue*. (Exhibit 21, p. 5-7). The case law even states that a judge may correct the clerical error. ***Miller v. Variety Corp.***, 922 S.W.2d 821, 824 (Mo.App. E.D. 1996). Relator Hess expressly requested the Circuit Court correct the date of the filing, as allowed by law, based on the investigation and determination of the Circuit Clerk. (Exhibit 21, p. 6.) In regard to the second criteria, Relator Hess provided evidence of the error of the Circuit Clerk when he filed as an exhibit to his memorandum of law the letter of Mr. Favazza acknowledging the error. (Exhibit 21, exhibit A.) This letter of Mr. Favazza also noted that the date of the filing was on or before November 26, 2001, based upon his investigation. (Exhibit 21, exhibit

A.) Therefore, Relator Hess has shown the proper filing date and that this date was timely. In answer to the third criteria, Relator Hess, again through the letter of Mr. Favazza, the St. Louis City Circuit Clerk, showed the motion was in the possession of the Circuit Clerk no later than November 26, 2001. Hence, Relator Hess did show that there was an error by the Circuit Clerk and that it was the type of error that must be corrected because the motion was timely lodged with the Circuit Clerk.

The brief of Respondent is wrong when it states that Relator Hess did not timely file his venue challenge. Relator Hess obtained permission from Plaintiffs' counsel for an additional thirty days and memorialized this agreement through an entry filed with the Circuit Court. Relator Hess filed the motion to change venue within the agreed to extension of time as determined by the Circuit Clerk, Mr. Favazza. As this Court held in *White*, the extension of time should be recognized by the Court in that it was memorialized and filed with the Court and there seems no logical reason to differentiate between the extension of time in *White* and this one. Moreover, Relator Hess provided ample evidence that the motion was timely filed in the letter from Mr. Favazza who did the investigation and determined that Relator Hess filed the motion by November 26, 2001.

**II. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because venue is improper in the St. Louis City under §355.176.4, R.S.Mo. 1994 in that the cause of action, if any, accrued in St. Louis County, Missouri Baptist has its registered agent and principle place of business in St. Louis County, and BJC has its registered agent in St. Louis County.**

Relator Hess rightfully contests the decision of Respondent in her order of July 31, 2002, because she failed to transfer the entire case before her to St. Louis County, the county of proper venue. The fact that Respondent believes that there is proper joinder of the defendants is irrelevant to the determination of venue because one of the non-profit defendants cannot be sued in St. Louis City. However all of the non-profit defendants may be sued in St. Louis County in that the alleged wrong occurred in St. Louis County, both non-profit defendants maintain their registered agents in St. Louis County, and Missouri Baptist Medical Center's (hereinafter Missouri Baptist) principle place of business is in St. Louis County. Insofar as there is one venue that is proper with regard to both non-profit corporations pursuant to §355.176.4, R.S.Mo., Respondent must be ordered to transfer the entire case to that venue.

The Court must determine venue on the date the suit was brought. *State ex rel. DePaul Hospital Ctr. v. Mummert*, 870 S.W.2d 820, 823 (Mo. banc 1994); *State ex rel. Linthicum et al. v. Calvin*, 57 S.W.3d 855, 857 (Mo. banc 2001). For purposes of determining venue, Respondent does not argue that Missouri Baptist is subject to suit in St. Louis City according to any of the three permissible venues as set forth in §355.176.4,

R.S.Mo. or that BJC Health System (hereinafter BJC) is subject to suit in St. Louis City pursuant to §355.176.4 (2) and (3), R.S.Mo. Plaintiffs alleged the wrong occurred in St. Louis County (Exhibit 10, ¶¶s 8 and 11) and Plaintiffs alleged the registered agents of Missouri Baptist and BJC were in St. Louis County (Exhibit 10, ¶¶s 3 and 4). Moreover, affidavits were submitted that stated that Missouri Baptist is located in St. Louis County, Missouri. (Exhibits 18 and 19). Respondent instead alleges in her brief that because BJC maintains its principle place of business in St. Louis City that joinder by the Plaintiffs of the other non-profit Defendant still allows the suit to proceed in St. Louis City. (Brief of Respondent, p. 20). Therefore, Respondent tacitly admits, by failing to argue otherwise, that Missouri Baptist may be sued only in St. Louis County.

But the position of Respondent that the suit may proceed in St. Louis City as to all Defendants including Missouri Baptist is faulty. Respondent believes that if joinder is proper as to one of the non-profit defendants then the joinder of other Defendants, including any non-profit defendant, does not require the transfer of the case to another venue. (Brief of Respondent, p. 20). Respondent relies on §508.040, R.S.Mo. for her position that analysis that venue is proper in St. Louis City. (Brief of Respondent, p. 20). However, this Court shunned any similarity between §508.040, R.S.Mo. and §355.176.4, R.S.Mo. noting that the legislature used the word “only” in the latter statute and “only” is missing entirely from §508.040, R.S.Mo. *SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 144 (Mo. banc 2002). In fact, this Court stated that “While Respondent’s analogy to the interpretation of section 508.040 is appealing at first blush, it fails to sufficiently take into account the differences in wording between section 508.040 and

section 355.176.4.” *Id.* Instead, this Court approved the view of SSM Health Care St. Louis in its analogy of §355.176.4, R.S.Mo. to §§508.050, R.S.Mo. and 508.060, R.S.Mo. *Id.*, at 144-145. Thus Respondent’s reliance on §508.040, R.S.Mo. is entirely misplaced.

More appropriate for a determination of the issue of the proper venue of this suit is the line of cases discussing venue statutes that are specific and not general venue statutes. For instance, §508.050, R.S.Mo. is a specific venue statute that applies to cities and, as noted above, is analogous to §355.176.4, R.S.Mo. Section 508.050, R.S.Mo. states that a “[s]uits against municipal corporations as defendants or codefendant shall be commenced only in the county in which the municipal corporation is situated...” §508.050, R.S.Mo. A situation did arise when a contractor laying telephone cable sued two cities in different counties. In that case the plaintiff sued the City of Springfield, which is located in Greene County, and the City of Fordland, which is located in Webster County. *State ex rel. City of Springfield Through Bd. of Public Utilities v. Barker*, 755 S.W.2d 731, 732 (Mo.App. S.D. 1988). Plaintiff filed the suit in Webster County and the City of Springfield filed a writ. The Southern District of the Court of Appeals noted that it was impossible to apply §508.050, R.S.Mo. due to the two differing counties and therefore allowed the suit to proceed in either county in which a municipal corporation was situated. *Id.*, at 734. It was only when it was impossible to apply the venue statute that the Southern District fashioned a remedy to the dilemma. *Id.* If the cities were in the same county the court could easily apply the special venue statute and did not need to fashion any remedy.

The instant case is notably different from the issue presented in the *City of Springfield* case. It is not impossible to file suit against the two separate non-profit corporations in the same county in this case. As demonstrated above, venue is proper as to Missouri Baptist under all three possible venues according to §355.176.4, R.S.Mo. in St. Louis County and BJC is subject to suit in St. Louis County also pursuant to §355.176.4 (2) and (3), R.S.Mo. Hence this suit is similar to a suit in which a plaintiff would sue two different cities that are situated in the same county. No special remedy is needed as application of §355.176.4, R.S.Mo. directs the Respondent to transfer venue to St. Louis County.

In conclusion, venue for the entire case is proper only in St. Louis County because Plaintiffs can only sue Missouri Baptist in St. Louis County and can sue BJC in either St. Louis City or St. Louis County. Venue is proper for Missouri Baptist only in St. Louis County because that is where the alleged wrong occurred, Missouri Baptist is located in St. Louis County, and the registered agent for Missouri Baptist is in St. Louis County. BJC can be sued in St. Louis County because that is the location of the alleged wrong and BJC maintains its registered agent in St. Louis County. Joinder is irrelevant in this instance because there is only one venue where Plaintiff can sue both non-profit Defendants because Missouri Baptist cannot be sued in St. Louis City pursuant to §355.176.4, R.S.Mo. Therefore, this Court must order Respondent to transfer the entire case to St. Louis County.

**III. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because if venue must be separately considered, then the venue of Dr. Hess in relation to Missouri Baptist and BJC should have been considered and the case transferred to St. Louis County in that Dr. Hess allegedly performed the negligent acts in St. Louis County at Missouri Baptist and St. Louis County is the proper venue pursuant to §355.176.4, R.S.Mo. for Missouri Baptist.**

Respondent Neill transferred the portion of the case involving Missouri Baptist to St. Louis County after reconsideration of her order of July 31, 2002. It is the position of Relator Hess that if she was correct in her subsequent Order of November 27, 2002, regarding an analysis of the separate venues of the Defendants, then she should have performed this same analysis in her order of July 31, 2002.

Joint liability exists when there is a “concerted action by two or more persons that resulted in the infliction of an injury.” *State ex rel. Tarrasch v. Crow*, 622 S.W.2d 928, FN4 (Mo. banc 1981). This involves a common scheme or design. *Id.* More common are concurrent tortfeasors, which are two or more persons independently causing an injury. *Id.* Relator Hess’ relationship with Missouri Baptist and BJC as alleged is one of a concurrent tortfeasor as defined above and not as a joint tortfeasor. Plaintiffs made no allegations in their *First Amended Petition* that there was a common scheme or plan between Relator Hess and Missouri Baptist or BJC. (Exhibit 10). When a defendant is a concurrent tortfeasor, the venue of each of the concurrent tortfeasors must be determined

separately. Rule 51.01, V.A.M.R., *Turnbough v. Gaertner*, 589 S.W.2d 290, 292 (Mo. banc 1979).

Using these definitions, suit against Relator Hess is appropriate in St. Louis County. Relator Hess lives in St. Louis County and the alleged tort occurred in St. Louis County at Missouri Baptist. Relator Hess, as alleged by the Plaintiffs gave an order to a staff member at Missouri Baptist. (Exhibit 10, ¶ 22(d).) Thus the issues involved in the suit concern alleged conduct at Missouri Baptist by Relator Hess. There are no similar allegations between Relator Hess and BJC. Therefore, Hess' portion of the case should be transferred to St. Louis County.

In conclusion, Plaintiffs have not alleged that there was any common scheme or plan between Relator Hess and either Missouri Baptist or BJC. Without any allegation of a common scheme or plan, the relationship between Relator Hess and Missouri Baptist and BJC is that of a concurrent tortfeasor. As such Relator Hess' venue must be determined separately and his contacts are with Missouri Baptist in that alleged conduct occurred at Missouri Baptist. This Court should order Respondent to transfer the part of the case of Relator Hess to St. Louis County.



## **CONCLUSION**

Respondent errs in her conclusions in regard to all three issues raised by Relator Hess. First, the motion to transfer venue was timely filed in that the Circuit Clerk investigated the date upon his office received the motion and concluded that the motion was in his office by November 26, 2001. This date, November 26, 2001, is the date that Plaintiffs' counsel and Realtor Hess' counsel agreed to for the filing of any type of legal document including a challenge to venue. The agreement was written and filed with the Circuit Clerk within the time allowed for filing an answer, responsive pleading, or motion to the *First Amended Petition*. The Respondent should not be allowed to raise an issue that not even the Plaintiffs raised.

Second, §355.176.4, R.S.Mo. is a special venue statute that applies to non-profit corporations. Just as no conflict arises when a plaintiff sues two cities in the same county where they both are situated, no conflict arises when two non-profit corporations are subject to suit in one venue under the statute. There are no two venues that are appropriate to both non-profit Defendants in this case. Missouri Baptist may only be sued in St. Louis County according to the non-profit venue statute and BJC may be sued in either St. Louis County or St. Louis City. Because there is only one venue that applies to both, venue is proper in St. Louis County only.

Finally, and alternatively, Plaintiffs did not allege any common scheme or design between Relator Hess and Missouri Baptist or BJC, making the relationship between Relator Hess and Missouri Baptist and BJC not one of joint tortfeasors but rather concurrent tortfeasors. As such, Relator Hess' venue must be determined independently

of either Missouri Baptist or BJC. In that regard, Relator Hess' actions allegedly took place at Missouri Baptist and there is no connection alleged between Relator Hess and BJC. Thus, the portion of the case involving Relator Hess must be transferred to St. Louis County and combined with that portion of the case relating to Missouri Baptist.

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**CERTIFICATE OF COMPLIANCE WITH**  
**MISSOURI SUPREME COURT RULE 84.06(b) and (c) AND RULE 84.06(g)**

The undersigned certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court 84.06(b) and, according to the word count function on Microsoft Word XP by which it was prepared, contains 5,462 words, exclusive of the cover, Certificate of Service, this Certificate of Compliance, the signature block, and the supplemental appendix.

The undersigned further certifies that the diskette filed herewith containing the Relator's Reply Brief in electronic form complies with Missouri Supreme Court Rule 84.06(g) because it has been scanned for viruses and is virus free.

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### **CERTIFICATE OF SERVICE**

A copy of the above and foregoing was hand delivered this 27<sup>th</sup> day of June 2003, to: ***The Honorable Margaret M. Neill***, Circuit Court of St. Louis, 10 North Tucker, St. Louis, Missouri 63101; ***The Honorable Michael David***, Circuit Court of St. Louis, 10 North Tucker, St. Louis, Missouri 63101; ***M. Graham Dobbs, Esq.***, Attorney for Plaintiff, 701 Market Street, Suite 800, St. Louis, Missouri 63101, and ***Paul N. Venker, Esq.***, Attorney for Defendants BJC and Missouri Baptist Hospital, 10 South Broadway, Suite 1600, St. Louis, Missouri 63102.

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IN THE  
MISSOURI SUPREME COURT

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NO. SC 85138

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STATE OF MISSOURI, ex rel. JOHN HESS, M.D.

Relator,

v.

MARGARET M. NEILL, Circuit Court Judge, 22<sup>nd</sup> Judicial Circuit, Missouri,

Respondent.

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APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS CITY  
CAUSE NO. 012-00056

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**SUPPLEMENTAL APPENDIX TO  
THE REPLY BRIEF OF RELATOR JOHN HESS, M.D.**

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**§508.050. Suits against municipal corporations, where commenced**

Suits against municipal corporations as defendant or codefendant shall be commenced only in the county in which the municipal corporation is situated, or if the municipal corporation is situated in more than one county, then suits against the municipal corporation shall be commenced only in that county wherein the seat of government of the municipal corporation is situated; except that suits may be brought against a city containing more than four hundred thousand inhabitants in any county in which any part of the city is situated.

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